



# INDUSTRY CIRCULAR

DEPARTMENT OF  
THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Washington, D.C. 20226

Number: 80-5

Date: May 30, 1980

## LABEL STATEMENTS, ADVERTISING, AND ANALYTICAL TOLERANCES FOR MALT BEVERAGES

Brewers, Importers, Wholesale Malt Liquor Dealers and Others Concerned:

Purpose. The purpose of this circular is to inform industry members that ATF Ruling 79-17 is modified and superseded by a new ruling which will be published in a future quarterly issue of the Alcohol, Tobacco and Firearms Bulletin. The new ruling will read substantially as follows:

ATF Ruling 79-17 dealt with statements of caloric and carbohydrate content in the labeling and advertising of malt beverages. Specifically, ATF Ruling 79-17 held that the Bureau will not sanction any caloric or carbohydrate references on labels that do not contain a statement of average analysis. Also, ATF Ruling 79-17 required an average analysis statement on all labels for malt beverages using the word "light" (or "lite") as part of the brand or product name. In addition, previously approved certificates of label approval for malt beverages which did not comply with the ruling were allowed until December 31, 1979.

The Bureau was asked to reconsider its position with respect to an average analysis statement on all labels for malt beverages using the word "light" or "lite" as part of the brand and product name. Numerous malt beverages utilize the words "light" or "lite" as a color connotation. The Bureau also received a number of inquiries relating to average analysis statements on quarts or larger containers of malt beverages.

The Bureau has reconsidered its position with respect to requiring an average analysis statement on labels for malt beverages using the word "light" or "lite" as part of the brand or product name. We have decided to thoroughly air the issue in a rulemaking proceeding. Further, the Bureau recommends that the average analysis shown on labels should be for the amount of malt beverage in the labeled container. If the container is more than 12 fl. oz. the analyzed amount should be stated per container size or per serving size, e.g., 12 fl. oz. No average analysis is required to appear on kegs. Additionally, the use-up period for previously approved certificates of label approval has been lengthened to August 1, 1980.

Accordingly, Ruling 79-17 is restated below in its entirety with the modifications noted above.

The Bureau of Alcohol, Tobacco and Firearms has been asked to review its present position regarding statements of caloric and carbohydrate content in the labeling and advertising of malt beverages.

#### CARBOHYDRATE CONTENT

Sections 2(i) and 5(f) of the Federal Alcohol Administration Act, implemented by regulations in 27 CFR, Part 7 for malt beverages, relate to prohibited statements and practices in labeling or advertising. In general, the FAA Act and implementing regulations prohibit the use of certain statements on labels of malt beverages introduced into interstate commerce, and the use of such statements in advertisements in interstate commerce, or advertisements that are circulated to induce sales in interstate commerce, if the laws of the State from which the malt beverages are to be shipped impose restrictions thereon.

Prohibited statements include those that are untrue in any particular, or irrespective of falsity, tend to create a misleading impression, or are disparaging of a competitor's product; or that imply that the use of any malt beverage has curative or therapeutic effect.

The Bureau has held (ATF Ruling 76-1, 1976 ATF C.B. 82) that labels and advertising for malt beverages could not state or imply the presence of calories unless such reference was specified either as part of an average analysis or in comparison with the brewer's regular product. ATF Ruling 76-1 also held that any labeling or advertising references relating to the carbohydrate content of these products could only appear as a part of a statement of average

In reviewing its position, the Bureau has found that specifying the caloric content of the product in comparison to the brewer's regular product is no longer essential to give the consumer a point of reference. Also, the Bureau has determined that carbohydrate references should be handled in the same manner as caloric references.

Held, caloric and carbohydrate representations made without qualification in the labeling and advertising of malt beverages are considered to be misleading and contrary to the provisions of 27 CFR 7.29(e) and 7.54(e), since they create the impression that the product has value as a dietary aid.

The Bureau will not sanction any caloric or carbohydrate references on labels that do not contain a statement of average analysis.

The average analysis shown on labels may be stated per container size if the container is 12 fl. oz. or less. For example, the average analysis for a 7-ounce container may read:

PER 7 FL. OZ. - AVERAGE ANALYSIS

Calories	56
Carbohydrates	1.6 grams
Protein	0.5 grams
Fat	0.0 grams

If the container is more than 12 fl. oz. the analyzed amount may be stated per container size or per serving size, e.g., "per 12 fl. oz." For example, the average analysis for a quart container may read:

PER 12 FL. OZ. - AVERAGE ANALYSIS

Calories	96
Carbohydrates	2.8 grams
Protein	0.9 grams
Fat	0.0 grams

All statements of average analysis should include container size or serving size. No average analysis is required to appear on kegs. The average analysis statement will be optional in advertising.

In addition to the above, but not in lieu of the statement of average analysis on labels, the Bureau will permit statements of caloric or carbohydrate content such as "contains 96 calories per 12 ozs." on any label and in any advertising of malt beverage products. The serving size, e.g., "per 12 fl. oz.," must be specified for any such caloric or carbohydrate statement.

Held further, specific caloric and carbohydrate comparisons may be made in advertising between a malt beverage labeled in accordance with this ruling and an equal volume of a competitor's product labeled in accordance with this ruling. The comparison may not be either misleading or disparaging of a competitor's product. Additionally, a brewer may compare, on labels and in advertising, the calories and carbohydrates of a malt beverage he has produced and labeled in accordance with this ruling and an equal volume of his regular beer.

Examples of allowable comparisons are as follows: "96 calories per 12 ozs.--48 calories (or 1/3) less than competitor's name Light Beer"; "2.8 grams carbohydrates per 12 ozs.--1.4 grams (or 1/3) less than competitor's name Light Beer"; "Brand name contains 96 calories per 12 ozs. while competitor's name Light Beer contains 106 calories per 12 ozs."; "Brand name contains 2.6 grams carbohydrates per 12 ozs. while competitor's name Light Beer contains 3.0 grams per 12 ozs."; "90 calories per 12 ozs.--45 calories (or 1/3) less than our regular beer"; "2.6 grams carbohydrates per 12 oz.--1.3 grams (or 1/3) less than our regular beer."

Previously approved certificates of label approval for malt beverages which bear caloric or carbohydrate representations but not statements of average analysis may be used until August 1, 1980. At that time the certificates must be returned for cancellation. A reasonable amount of time will be allowed for the preparation of substitute advertising copy to conform with the requirements of this ruling. However, the transition should be effected as expeditiously as possible.

#### TOLERANCES

The Bureau has determined that tolerance ranges are required with respect to labeled statements of caloric, carbohydrate, protein, and fat contents for malt beverages. The intent of these tolerances is to provide for normal production and analytical variables while continuing to ensure that the labeling is not misleading to the consumer.

Held, the statement of caloric content on labels for malt beverages will be considered acceptable as long as the caloric content, as determined by ATF analysis, is within the tolerance +5 and -10 calories of the labeled caloric content. For example, a label showing 96 calories will be acceptable if ATF analysis of the product shows a caloric content between 86 and 101 calories.

Held further, the statements of carbohydrate and fat contents on labels for malt beverages will be considered acceptable as long as the carbohydrate and fat contents, as determined by ATF analysis, are within a reasonable range below the labeled amount but, in no case, are more that 20% above the labeled amount. For example, a label showing 4.0 grams carbohydrates will be acceptable if ATF analysis of the product shows a carbohydrate content which is under 4.0 grams (within good manufacturing practice limitations) but not more than 4.8 grams.

Held further, the statement of protein content on labels for malt beverages will be considered acceptable as long as the protein content, as determined by ATF analysis, is within a reasonable range above the labeled amount but, in no case, is less than 80% of the labeled amount. For example, a label showing 1.0 gram protein will be acceptable if ATF analysis of the product shows a protein content which is more than 1.0 gram (within good manufacturing practice limitations) but no less than 0.8 gram.

Certificates of label approval which are not in compliance with this ruling must be returned for cancellation after August 1, 1980.

Inquiries: Inquiries concerning this circular should refer to its number and be addressed to the Assistant Director (Regulatory Enforcement), Bureau of Alcohol, Tobacco, and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226.

G. R. Liberson  
Director